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JJGJR.: 12-04

Paper No: 17

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MAY 24 2005

OFFICE OF PETITIONS

In re Application of :
Pinchuk, et al. :
Application No. 09/657,041 : DECISION ON PETITION
Filing Date: 5 September, 2000 :
Attorney Docket No. BSI-430US8 :

This is a decision on the petition under ¶(a) of 37 C.F.R. §1.47, filed on 7 January, 2005.

The petition is **GRANTED**.

BACKGROUND

The record indicates:

- the application was filed on 5 September, 2000, and, in the Office action of 2 July, 2003, the Examiner found that the re-issue application had been filed without, *inter alia*, a valid and fully executed oath or declaration because the oath/declaration filed failed “to identify at least one error which is relied upon to support the reissue application”; and
- a Supplemental Reissue Declaration filed with an amendment on (or about) 6 October, 2003 (over a 1 October, 2003, Certificate of Mailing), was unsigned and Petitioner’s reply filed on 11 December, 2003 (without a request and fee for extension of time), included an oath/declaration that was not a valid fully executed oath/declaration and no petition under 37 C.F.R. §1.47) was filed at that time;
- therefore, the application appears to have gone abandoned after midnight 1 October, 2003;
- no Notice of Abandonment was mailed by the Office;

- the original petition under 37 C.F.R §1.47 was filed via FAX on 9 February, 2004, after the instant application went abandoned, and was not accompanied by a petition (with fee) to revive the application as abandoned due to unintentional delay (under 37 C.F.R §1.137(b)); that petition referenced, *inter alia*, an oath/declaration signed by named inventors save for Rysler Alcime (Mr. Alcime); and a declaration by Petitioner Jonathan H. Spadt (Reg. No. 45,122), and a copy of a letter from Petitioner to the non-signing inventor Mr. Alcime, however the copy of the letter to Mr. Alcime indicates that only the oath/declaration—and not the entire application (description, claims, drawings)—was sent to Mr. Alcime; thus, the original petition was dismissed on 9 December, 2004;
- the instant petition under 37 C.F.R §1.47 was filed on 7 January, 2005, and was accompanied by:
 - documentation supporting the allegations, *inter alia*, that Mr. Alcime was presented with a copy of the entire application, and he that he has not returned a signed copy of the oath/declaration; as well as
 - a petition (with fee) under 37 C.F.R §1.137(b), which latter petition has been granted.

This application and papers have been reviewed and found in compliance with 37 C.F.R. §1.47(a).

This application hereby is **ACCORDED status under 37 C.F.R. §1.47(a).**

As provided under 37 C.F.R. §1.47(a), the Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition.

Notice of the filing of this application also will be published in the Official Gazette.

This file is being released to OIPE for processing as necessary to reflect the instant decision before being released for examination in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.



John J. Gillon, Jr.
Senior Attorney
Office of Petitions



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OFFICE OF PETITIONS

In re Application of :
Pinchuk, et al. :
Application No. 09/657,041 : COMMUNICATION
Filing Date: 5 September, 2000 :
Attorney Docket No. BSI-430US8 :

Dear Rysler Alcime:

You are named as inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. §116 (United States Code), and 37 C.F.R. §1.47,¹ ¶a, Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 C.F.R. §1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you

¹ The regulations at 37 C.F.R. §1.47 provide:

§ 1.47 Filing when an inventor refuses to sign or cannot be reached.

(a) If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself or herself and the nonsigning inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, the fee set forth in §1.17(h), and the last known address of the nonsigning inventor. The nonsigning inventor may subsequently join in the application by filing an oath or declaration complying with §1.63.

(b) Whenever all of the inventors refuse to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom an inventor has assigned or agreed in writing to assign the invention, or who otherwise shows sufficient proprietary interest in the matter justifying such action, may make application for patent on behalf of and as agent for all the inventors. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, the fee set forth in §1.17(h), and the last known address of all of the inventors. An inventor may subsequently join in the application by filing an oath or declaration complying with §1.63.

© The Office will send notice of the filing of the application to all inventors who have not joined in the application at the address(es) provided in the petition under this section, and publish notice of the filing of the application in the *Official Gazette*. The Office may dispense with this notice provision in a continuation or divisional application, if notice regarding the filing of the prior application was given to the nonsigning inventor(s).

[47 Fed. Reg. 41275, Sept. 17, 1982, effective Oct. 1, 1982; 48 Fed. Reg. 2709, Jan. 20, 1983, effective Feb. 27, 1983; revised, 62 Fed. Reg. 53131, Oct. 10, 1997, effective Dec. 1, 1997; revised, 65 Fed. Reg. 54604, Sept. 8, 2000, effective Nov. 7, 2000]

care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 C.F.R. §1.63.

Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733.

Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or toll-free: (800) 972-6382 (outside the Washington D.C. area).

Telephone inquiries concerning this letter may be directed to the undersigned at (571) 272-3214.



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